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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

JEREMY JASEN HALE,

Defendant and Appellant.

2d Crim. No. B236042
(Super. Ct. No. 2010045750)
(Ventura County)

Jeremy Jasen Hale appeals a judgment following his guilty plea to four felony counts of making criminal threats (Pen. Code, § 422) and his admission that he had a prior serious felony conviction in 2002 (§§ 667, subd. (a)(1), (c)(1), (e)(1), 1170.12, subd. (a)(1)).¹ The trial court found he fell within the purview of the three strikes law and sentenced him to an aggregate nine-year prison term. We conclude Hale has not shown that the court erred by imposing a nine-year term or by not striking his prior 2002 felony conviction. We affirm.

FACTS

On December 25, 2010, Hale was a passenger in a car driven by his father. Hale's mother was in the front passenger seat. Hale's sister Jessica, her 14-year-old daughter, and Hale were in the rear seat. Jessica's nine-year-old son was in the front seat.

¹ All statutory references are to the Penal Code unless otherwise stated.

Hale got into an argument with Jessica and he began hitting her. She sustained injuries to her left eye, the right side of her face and the back of her head. Jessica's 14-year-old daughter tried to stop the fight. Hale punched her in the face with his fist. Jessica's nine-year-old son turned around to try to stop the fight. Hale punched him in the face.

Hale's father stopped the car, got out and told Hale to stop hitting Jessica. Hale began hitting his father. The two of them "started fighting on the side of the road."

After that fight, Hale threatened to kill Jessica. He "looked at everybody in the vehicle and said he was going to kill them all." Jessica was "shaking and crying." She was "very frightened" because she knew Hale was "violent" and that he frequently carried weapons.

The district attorney filed a complaint against Hale for felony criminal threats (§ 422), misdemeanor battery (§ 242), and cruelty to children by inflicting injuries (§ 273a, subd. (b)).

Hale entered into a written plea agreement to plead guilty to four felony counts of making criminal threats. He admitted that he had a prior strike for a 2002 serious felony conviction for threatening a victim/witness. (§ 136.1, subd. (c)(1).) He checked the box on the plea agreement that contained information about the consequences of his guilty plea. It provided, "I could be sentenced to the state prison for a maximum possible term of 15 year(s)."

During his sentencing hearing, Hale's counsel said, "I am asking for the court to sentence him to seven years in prison." The court sentenced him to an aggregate term of nine years. It did not strike the 2002 prior conviction.

DISCUSSION

Hale contends the trial court erred by not striking his prior serious felony conviction. He claims the court did not consider mitigating factors that showed that he fell outside the spirit of the three strikes law. We disagree.

"[I]n ruling whether to strike or vacate a prior serious and/or violent felony conviction," the court considers "the nature and circumstances of [the defendant's]

present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects." (*People v. Williams* (1998) 17 Cal.4th 148, 161.) The court may strike a prior conviction where these factors show that the defendant falls outside the "spirit" of the three strikes law. (*Ibid.*)

We review claims of error for not striking a prior strike conviction "under the deferential abuse of discretion standard." (*People v. Carmony* (2004) 33 Cal.4th 367, 374.) Appellant has the burden ""to clearly show that the sentencing decision was irrational or arbitrary."" (*Id.* at p. 376.) ""In the absence of such a showing, the trial court is presumed to have acted to achieve the legitimate sentencing objectives, and its discretionary determination to impose a particular sentence will not be set aside on review."" (*Id.* at pp. 376-377.) A sentencing decision ""will not be reversed merely because reasonable people might disagree."" (*Id.* at p. 377.) In such a case, ""[a]n appellate tribunal is neither authorized nor warranted in substituting its judgment for the judgment of the trial judge."" (*Ibid.*)

Hale claims the trial court did not consider mitigating factors such as: 1) he was diagnosed with depression following a 2008 traffic accident; and 2) "other than the [prior] 2002 offense, the present case was the first time in many years that [he] committed a felony offense."

The trial court "is presumed to have considered all of the relevant factors in the absence of an affirmative record to the contrary." (*People v. Myers* (1999) 69 Cal.App.4th 305, 310.) Here the information about Hale's depression and his medical condition was included in the defense sentencing memorandum. The record reflects that the court considered that information. It said it had reviewed that memorandum. The information regarding the 2008 accident and his depression was also contained in the probation report which the trial judge signed. The prior strike conviction occurred in February 2002, and the current felony convictions involve 2010 offenses. But a substantial time span between these felonies is not a "significant" mitigating factor where the defendant "did not refrain from criminal activity during that span of time, and he did not add maturity to age." (*People v. Williams, supra*, 17 Cal.4th at p. 163.)

Hale committed additional offenses during the time span between the 2002 offense and the current felonies. In 2008, a woman obtained a restraining order against Hale. In 2009, he was convicted of "an intentional and knowing violation" of the court's protective order. (§ 273.6.) In May 2010, he was convicted of using a controlled substance. (Health & Saf. Code, § 11550, subd. (a).) In October 2010, a warrant issued for his arrest for possession of narcotics paraphernalia. (*Id.*, § 11364.) Moreover, Hale served part of the time span between the 2002 felony and the current offenses in prison.

The trial court also could reasonably infer that Hale "did not add maturity to age." (*People v. Williams, supra*, 17 Cal.4th at p. 163.) The probation report reflects that Hale's substance abuse has been a longstanding problem. He first used methamphetamine at the age of 14 or 15, and he continued to use it once a week until November 2010. When he was arrested in 1998, at age 15, he "exhibited symptoms of being under the influence of a controlled substance." He had a 2010 conviction involving substance abuse. He admitted that he "tested dirty" while on parole. The probation officer indicated that he had problems obeying rules while in custody. She said, "On December 25, 2010, [Hale] was booked at the Ventura County jail. As of June 8, 2011, he had accrued five major incident reports for violating jail rules, obnoxious behavior, and accumulation of minor write-ups." The probation officer asked Hale "how he felt about the victims or how the present matter may have affected them." He replied, "I don't give a shit about them." He added that he felt badly about hitting Jessica in front of the children.

The trial court noted that his current offenses involved death threats to members of his family. It said, "I remember this fairly vividly because the emotion of the family was palpable. They were terrified." The court may properly consider the impact on the victims in deciding whether to strike priors. (*People v. Williams, supra*, 17 Cal.4th at p. 161.) Hale's 2002 offense also involved a threat of violence. He was convicted of threatening a victim/witness to a crime. (§ 136.1, subd. (c)(1).)

The trial court also considered Hale's criminal history. In the probation report, the probation officer said, "At age 28, the defendant has a lengthy criminal

record" His juvenile history includes sustained petitions for driving stolen vehicles, assault, and CYA commitments. The probation officer said, "Unfortunately, his life became more chaotic when he introduced substance abuse and gang activity into his life."

At the sentencing hearing, Hale's counsel requested the trial court to impose a seven-year sentence. In his plea agreement, Hale was advised that he faced a potential 15-year maximum sentence. The court found "nine years was appropriate." Hale has not shown an abuse of discretion.

The judgment is affirmed.

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GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Charles W. Campbell, Jr., Judge

Superior Court County of Ventura

Richard Lennon, under appointment by the Court of Appeal, for Defendant and Appellant.

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